

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CWP-14112-2023 (O&M)

Judgment Reserved on: 01.02.2024
Judgment Pronounced on: 21.02.2024

WWICS ESTATES PVT. LTD. AND ANOTHER

... Petitioners

VERSUS

SUKHMANJEET SINGH AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Vishal Pundir, Advocate for the petitioners.

Mr. Harsh Goyal, Advocate for respondents No.1 and 2.

VINOD S. BHARDWAJ, J.

Challenge in the present petition is to the order dated 16.05.2023 passed by the State Consumer Disputes Redressal Commission, U.T., Chandigarh, which is stated to be unsustainable and not maintainable in the eyes of law as there is no relationship of 'consumer and service provider' between the petitioner and respondents No.1 and 2.

Since an objection had been raised with respect to the maintainability of the present writ, which finds favour with this Court as sustainable, the factual aspects arising in the case are not being adverted to in detail since it might impact merits of the respective sides.

Bare minimum facts to get an idea about the nature of dispute are, however, extracted for reference only.

The respondent-complainant had booked a flat in the project floated by the petitioner for a sale price of Rs.52.93 lakh approximately. The entire consideration money is claimed to have been paid on the date of signing of the Builder-Buyer Agreement on 15.11.2011. Possession was to be delivered within 30 months from the above date. The same was however claimed to have not been delivered even till institution of complaint in November 2022. It was averred that despite submission of representation on 15.06.2020 and visits thereafter, nothing was done. The earlier complaint was withdrawn due to reply submitted by the developer that flat was cancelled.

The reply of the petitioner developer was to the effect that there was no Consumer Service provider relationship amongst the parties and a false case had been set up. One Gurnam Singh had approached the developer to purchase the flat in the name of the consumers but later on informed that they do not want the flat and the same be treated as cancelled. The flat was allotted to another person. The earlier complaint was withdrawn.

Learned Senior Counsel appearing on behalf of the petitioner contends that the petitioner is Private Ltd. Company which is registered and carries on business within the State of Punjab. It promoted a colony by the name of 'Imperial Heights' at Kurali, District S.A.S. Nagar, Mohali, which is duly registered with the Competent Authority, and a completion certificate after satisfactory execution of the said project has also been issued.

The respondents No. 1 and 2 had earlier preferred a complaint before the State Consumer Disputes Redressal Commission, U.T., Chandigarh bearing No.190 of 2020 titled as 'Sukhmanjeet Singh another Versus WWICS' wherein a detailed reply had been filed on behalf of the petitioner raising

objection pertaining to maintainability of the complaint and jurisdiction before the State Consumer Disputes Redressal Commission, U.T., Chandigarh. Learned Senior counsel for the petitioners contends that the said complaint was thereafter dismissed as withdrawn vide order dated 06.10.2020 with liberty to avail the alternative remedies. It is submitted that after a period of nearly two years of the passing of said order, the same complaint has now been filed afresh before the State Consumer Disputes Redressal Commission, U.T., Chandigarh.

A detailed reply was filed by the petitioner before the State Consumer Disputes Redressal Commission, U.T., Chandigarh on 06.01.2023 and objections were taken with respect to the maintainability of the said complaint, especially when the earlier complaint was withdrawn from the State Consumer Disputes Redressal Commission, U.T., Chandigarh.

The learned Senior counsel appearing on behalf of petitioners contends that besides the objection of limitation and the relationship between the parties objection regarding the maintainability of the proceedings before the State Consumer Disputes Redressal Commission, U.T., Chandigarh, on various issues including the default on the part of the consumer to make the payment, was also made. He contends that notwithstanding the abovesaid objections, the complaint filed by the respondents was allowed by the State Consumer Disputes Redressal Commission, U.T., Chandigarh vide its Award dated 16.05.2023 and the petitioner was held jointly or severally liable to deliver the actual physical possession of the flat No.WEIH-801, Tower-A at Imperial Heights, Sector -115, S.A.S. Nagar, Mohali or to deliver the actual physical possession of some other flat having same specifications and in the

same project. Directions were also made to pay interest on the amount that had already been deposited alongwith compensation for mental agony and harassment. The instant petition has hence been filed challenging the Award passed by the State Consumer Disputes Redressal Commission by placing reliance on the judgment of the Hon'ble Supreme Court of India in the matter of "Ibrat Faizan Versus Versus Omaxe Buildhome Pvt. Ltd." reported as 2022 SCC Online 620 to contend that the jurisdiction to entertain a writ petition arising out of the award of State Commissions would also vest in the High Court since the State Commissions are akin to Tribunals and are subordinate to the writ jurisdiction of the respective High Courts.

Learned counsel for the contesting respondents No.1 and 2, on the other hand, have raised a preliminary objection with respect to the maintainability of the present petition. It is argued by him that the respondents had booked the aforesaid flat with the petitioner herein at a price of Rs.52,93,592/- and the entire sale consideration was paid on the date of execution of the Builder-Buyer Agreement i.e. on 15.11.2011. The possession of the property was to be delivered to the respondents within a period of 30 months from the date of execution of the Builder-Buyer Agreement. It is contended that the possession of the flat had not been offered till the date of institution of the complaint before the learned Commission and that the work at the site is still incomplete. Various representations were submitted to the developer and numerous visits were also made to hand over the possession of the flat alongwith the claim for damages on account of the delayed possession, however, neither the possession was offered nor was the claim responded to. Thus, the consumer complaint had been filed. He further submits that the mere

withdrawal of the earlier complaint to pursue the alternative remedies before the Competent Court/Forum cannot be construed as debarring the remedy to the petitioner to initiate the proceedings before the Competent Court. It is also submitted that all the objections raised by the petitioner were duly considered by the State Consumer Disputes Redressal Commission, U.T, Chandigarh and a finding was specifically recorded that relationship of consumer and service provider between the parties stood established. The State Consumer Disputes Redressal Commission, U.T, Chandigarh concluded that there was a delay on the part of the petitioner to perform its part of obligation under the Builder Buyer Agreement and handing over the actual and physical possession within a period of 30 months and the needful had not been done, hence they were liable not only to fulfill their obligation under the Builder Buyer Agreement but also liable to compensate the respondents-consumers for the delay that had occasioned.

The counsel for the respondents-consumers has raised an emphatical objection against the maintainability of the present petition and contends that the petitioner has an efficacious alternative remedy under the Consumer Protection Act, 2019 in an appeal before the National Consumer Disputes Redressal Commission, New Delhi. Reference in this regard is made to Section 58 of the Consumer Protection Act, 2019 as per which the National Consumer Disputes Redressal Commission, New Delhi has the jurisdiction to hear appeal against the order of any State Consumer Disputes Redressal Commission. He thus, contends that the petitioner has approached this Court notwithstanding that a statutory remedy of appeal was/is available to him.

Responding to the above objection with regard to the maintainability of the present petition, learned Senior Counsel appearing on behalf of the petitioner has contended that the remedy of filing writ petition before this Court would be available to the petitioner in view of the judgment of the Hon'ble Supreme Court in the matter of ***Ibrat Faizan (Supra)*** and that in light of various other judgments of the Hon'ble Supreme Court, wherein it has been held that writ jurisdiction of a High Court would not be barred where an order under challenge suffers from patent error and illegality.

Reliance is also placed on the judgment of "**Radha Krishan Industries Vs. State of Himachal Pradesh and Ors.**" reported as **(2021) 6 SCC 771**. The relevant extract of the same is reproduced hereinafter below:

"27. The principles of law which emerge are that:

27.1 The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition

should not be entertained when an efficacious alternate remedy is provided by law.

27.5. *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to than particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*

27.6. *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."*

It is thus, emphatically argued that the circumstances, where there is violation of principles of natural justice or where the proceedings are wholly without jurisdiction, the same would fall within an exception to the necessity to exhaust alternative remedies and that a mere existence of an alternative remedy would not operate as a bar in exercise of the jurisdiction by the High Court. Reference is also made to the judgment of Bombay High Court passed in the matter of "**Subhas Ratnakar Morey Versus Dhanraj Tulshiram Khaparde**" reported as **(2022) 4 Maharashtra Law Journal (Criminal) 491** to substantiate the above contention as regards the maintainability of the proceedings before this Court.

Learned counsel for the respondents, on the other hand, has placed reliance on the judgment dated 23.12.2022 passed by this Court in the matter of "**Kanwaljit Singh Toor and another Versus Punjab State**

Consumer Disputes Redressal Commission & others" bearing **CWP No.26164-2018** wherein, after taking into consideration the judgment of the Hon'ble Supreme Court in the matter of "**Nivedita Sharma Versus Cellular Operator Association of India**" reported as **(2011) 14 SCC 337** as well as the judgment of "**Cicily Kallarackal Versus Vehicle Factory**" reported as **(2012) 8 SCC 524** and also the judgment of **Ibrat Faizan (Supra)**, this Court has held that the judgment of **Ibrat Faizan (Supra)**, is applicable in the circumstances where the only remedy available to a person against an Award passed by the National Consumer Disputes Redressal Commission, New Delhi is by way of special leave petition before the Hon'ble Supreme Court. It was also held that in other matters where the remedy of appeal/revision before the Higher Forum i.e. the State Consumer Disputes Redressal Commission or the National Consumer Disputes Redressal Commission is available under the Consumer Protection Act, 2019, the ratio in the judgment of **Ibrat Faizan (Supra)**, would not get attracted and the law laid down by the judgment of **Nivedita Sharma** and **Cicily Kallarackal (Supra)** would hold the field.

It was also held therein that even in those circumstances, the scope of exercise of jurisdiction is confined to jurisdiction akin to Article 227 of the Constitution of India and does not expand to re-appreciation of the entire evidence. The relevant extract of the said judgment reads thus:

"42. The second question relates to the maintainability of the present petition against the warrants issued by the State Consumer Disputes Redressal Commission under Section 27 of the Consumer Protection Act, 1986.

43. The judgment in the matter of **Nivedita Sharma and Cicily Kallarackal (supra)** have ruled against remedy of filing of writ petition under the Consumer Protection Act, 1986 and mandate that the petition ought to be preferred before the statutory appellate forums available under the Consumer Protection Act, 1986. The Division Bench Judgment of the Hon'ble Supreme Court in the matter of "**Ibrat Faizan versus Omaxe Buildhome Private Limited**" reported as **2022 SCC OnLine SC 620** rules that writ petition would be maintainable before the High Court under Article 227 of the Constitution of India. The relevant extract of the present judgment in the matter of "**Ibrat Faizan (supra)**" reads thus:-

"13. In so far as the remedy which may be available under Article 136 of the Constitution of India is concerned, it cannot be disputed that the remedy by way of an appeal by special leave under Article 136 of the Constitution of India may be too expensive and as observed and held by this Court in the case of *L. Chandra Kumar (supra)*, the said remedy can be said to be inaccessible for it to be real and effective. Therefore, when the remedy under Article 227 of the Constitution of India before the concerned High Court is provided, in that case, it would be in furtherance of the right of access to justice of the aggrieved party, may be a complainant, to approach the concerned High Court at a lower cost, rather than a Special Leave to Appeal under Article 136 of the Constitution.

14. In view of the above, in the present case, the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the order passed by

the National Commission which has been passed in an appeal under Section 58(1)(a) (iii) of the 2019 Act. We are in complete agreement with the view taken by the High Court. However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

*14.1 The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of **Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97**, which has been consistently followed by this Court (see the recent decision of this Court in the case of **Garment Craft v. Prakash Chand Goel, 2022 SCC Online SC 29**). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India.”*

44. The earlier judgments of *Nivedita & Cicily (supra)* have not been referred by the Hon'ble Supreme Court in the judgment of ***Ibrat Faizan (supra)***. It is well settled position in law that when there are two divergent opinions of the Hon'ble Supreme Court emanating from Benches of co-equal strength, the High Court should follow the one which in its view is better in expounding a point of law. The said position in law was expounded by the Constitutional Bench of the Hon'ble Supreme Court in the case of "***Atma Ram versus State of Punjab***" reported as ***AIR 1959 SC 519***. The relevant extract of the above judgment reads thus:-

"Perhaps, the better course would have been to constitute a larger Bench, when it was found that a Full Bench of three Judges, was inclined to take a view contrary to that of another Full Bench of equal strength. Such a course becomes necessary in view of the fact that otherwise the subordinate courts are placed under the embarrassment of preferring one view to another, both equally binding upon them. In our opinion, the view taken by the earlier Full Bench is the correct one."

45. The said judgment has not been over ruled or set aside by the Hon'ble Supreme Court in any subsequent or larger Bench. Hence, the legal position remains uncontroverted that where judicial precedents of co-equal strength are irreconcilably in conflict, a Court has the freedom to pick and choose between them. It may refuse to follow the later decision on the ground that it was arrived at per inquirium or it may follow such decision on the ground that it is the latest authority. Which of these two courses the Court adopts would depend upon its acceptance or acknowledgment of one view.

46. The consistent view of the Hon'ble Supreme Court in the matter of Nivedita Sharma and Cicily Kallarackal is that writ jurisdiction would not be maintainable in the cases relating to Consumer Protection Act. In the matter of **Ibrat Faizan**, however, a relaxation has been prescribed. It would thus be essential to examine the contours of the above judgment.

47. The Hon'ble Supreme Court has held in the above judgment that where the remedy before the Supreme Court is under Article 136 of the Constitution of India, the person may approach the High Court under Article 227 of the Constitution of India. The said judgment however does not held that the writ petition under Article 227 would be maintainable even when a statutory remedy of appeal is available under the Act. The said judgment also goes on to say that jurisdiction to be exercised by the High Court is the limited jurisdiction of superintendence under Article 227. Hence, the High Court does not sit in re-appraisal of the evidence or exercise of its power of issuing prerogative writs. The jurisdiction vested in High Court under Article 227 of the Constitution of India is a supervisory revisional jurisdiction as per the law laid down by the Hon'ble Supreme Court of India in the matter of "**Sushilabai Laxminarayan Mudliyar versus Nihalchand Waghajibhai Shaha**" reported as (1993) Supp. (1) SCCII. The same is not an exercise of Power under Article 226 of the Constitution of India. It was held by the Hon'ble Supreme Court in the matter of "**S.K. Mohd. Umarsaheb versus K.H. Karimsab**" reported as AIR 1970 SC 61 that the power of general superintendence conferred by Article 227 involves a duty to keep all Courts & Tribunals within its jurisdiction in the bounds of their authority, to see that they do what their duty requires and that they do in a legal manner. The power would not be exercised to correct an error of fact or law unless such error is apparent on the face of the record or affects the jurisdiction or demonstrates grave injustice.

*It does not vest the High Court with any unlimited prerogative to correct Hardships. Hence, High Court would not substitute its view only because it seems more attractive, for the view of the subordinate Court/Tribunal once such view is also a possible view. A finding of fact is not to be interfered with unless the same is perverse, not based on any material what so ever or is vitiated by misdirection of law; or is against preponderance of evidence resulting in manifest injustice as held by Hon'ble Supreme Court in the matter of "**Khalil Ahmed Bashir Ahmed versus Tufelhussein Samasbhai Sarangpurwala**" reported as AIR 1988 SC 184.*

48. *The Hon'ble Supreme Court held in the matter of "Shalini Shyam Shetty versus Rajendra Shankar Patil" reported as (2010) 8 SCC 329 as under:-*

*"We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by turning them a Writ petition. This is sought to be justified on erroneous appreciation of the ratio in "**Surya Dev Rai versus Ram Chander Rai** reported as (2003) 6 SCC 675...."*

49. *The above passage has been quoted with approval in the matter of "**Radhey Shyam versus Chhabi Nath**" reported as (2015) 5 SCC 423.*

50. *Hence, the position in law which arises from above is that a writ jurisdiction akin to jurisdiction under Article 227 of the Constitution may be invoked where the remedy otherwise would be to approach Supreme Court under Article 136 of the Constitution of India and not in cases where remedy of appeal is otherwise prescribed under the statute i.e. the Consumer Protection Act, 1986 as in the present case.*

51. The judgment of **Ibrat Faizan (supra)** would not, in my considered opinion, permit invoking writ jurisdiction where statutory remedy of appeal is provided. The object of the latter judgment is to provide a cost effective remedy to approach the High Court instead of Supreme Court. Hence, in light of judgment of High Court in the matter of **“Ibrat Faizan” (supra)** the High Court, in its supervisory powers under Article 227 of the Constitution of India, would be entitled to entertain a Writ against orders where statutory remedy of appeal is not available and the remedy is only by way of approaching the Hon’ble Supreme Court under Article 136 of the Constitution of India.

52. The above view is also fortified from the well settled legal position that even though existence of alternative remedy may not be a bar to entertain a writ petition, however, where an efficacious and alternative remedy is available, it would not be appropriate to entertain a writ petition. The judgment of ‘Ibrat Faizan’ effectively confers only a revisional jurisdiction on the High Court against order and that too of the National Consumer Commission and not against every other order.

53. Additionally, similar controversy also came up before this Court in the matter of **“Rajinder Kumar Gautam and another versus State Consumer Disputes Redressal Commission, U.T. Chandigarh”** bearing CWP No. 22539 of 2021 decided on 27.05.2022 wherein this Court was dealing with the issue of the proceedings instituted against the developer under the Consumer Protection Act where the management had been jointly and severally held liable. The proceedings under Section 27 of the Consumer Protection Act, 1986 had been initiated and warrants of arrest had been issued for producing the petitioners therein before the State Commission to face the trial when the writ petitions were preferred. This Court while dealing with the said issue dismissed the writ petitions by holding that the proceedings

against the petitioners can be continued for their prosecution under Section 27 of the Consumer Protection Act. The relevant extract thereof reads thus:

*“Hence, irrespective of the fate of the proceedings pending before the NCLT or the effect of order of moratorium qua the Corporate Debtor, the proceedings against the petitioners can very well be continued for their prosecution under Section 27 of the Act. Although the counsel for the petitioners has submitted that the judgment of Hon’ble the Supreme Court in the case of **Anjali Rathi (supra)** is not applicable in the present case because in that case the proceedings against the promoters of the Corporate Debtor were held to be permissible only for any future violation of the settlement arrived at before Hon’ble the Supreme Court, and the Hon’ble Supreme Court had declined to issue any directions in that regard because the matter was still pending adjudication before the adjudicating authority, however, this Court finds that the said observations were made by the Supreme Court in the particular facts of that case. However, so far as the legal proposition is concerned, that has been well clarified in the aforesaid paragraph 15 of the said judgment. The counsel for the petitioners has also stressed upon the fact that another SLP is still pending before the Supreme Court, however, in the opinion of this Court, once the legal proposition has been clarified by the Supreme Court in case of **Anjali Rathi (supra)**, then there is no need to keep these petitions pending anymore.*

Although the counsel for the petitioners had raised another point that the petitioners were not parties before the Commission at the time of the passing of the judgment/order of liability and they have been introduced as respondents subsequently even during the execution proceedings, therefore, they cannot be held liable for the liability as such, however, at this stage, the counsel for the petitioners has submitted that he does not wish to press this argument, rather, he would take the said defence before the State Consumer Commission, if the need be.”

54. *The issue which thus arises is whether the present petition would be maintainable at this juncture when an efficacious alternative remedy is available under the statute.*

55. *In the proceedings that have been instituted under Section 27 of the Consumer Protection Act, 1986 an aggrieved has the remedy of an appeal to the National Consumer Disputes Redressal Commission against the orders passed by the State Commission as per Section 27-A of the Act. Resultantly, a statutory remedy of appeal is available to the petitioners against the order made by the State Commission and which are subject matter of challenge in the present petition(s).”*

At the same time, it is also noticed by this Court that the present writ petition filed before this Court, is dated 04.07.2023. A document has been placed on record by the respondent as per which the petitioner had infact preferred an appeal before the National Consumer Disputes Redressal Commission, New Delhi on 03.07.2023. The said fact has not been disclosed in the present petition and it has rather been averred in paragraph No.22 of the present petition that there is no other effective and speedy remedy available to

the petitioner except to approach this Court by way of filing the present writ petition.

The High Court Rules and Orders mandate a declaration to be made on an affidavit as to whether an efficacious and alternative remedy is provided under the statute or not. The petitioner, by way of a manipulative drafting, did not make the necessary declaration as per the High Court Rules and Orders as regards the efficacious and alternative remedies available to him and has chosen not to aver as regards the availability of such alternative remedies. Such mischievous conduct on the part of the petitioners deserves to be deprecated.

In the present case, there was not only an improper declaration, which was not in conformity with the High Rules and Orders, but also there was a concealment of the fact that an alternative remedy in the form of a statutory appeal was infact availed by the petitioner before filing the instant writ petition. The instant writ petition came up for hearing before this Court on 20.07.2023 when the following interim order was passed:

"The petitioners through the instant petition under Articles 226/227 of the Constitution of India are seeking quashing of order dated 16.05.2023 (Annexure P-1) whereby State Consumer Disputes Redressal Commission, U.T., Chandigarh assuming jurisdiction has passed impugned order whereby petitioner has been directed to pay a sum of Rs.52 Lakh alongwith interest.

Mr. Ashish Aggarwal, learned Senior Counsel for the petitioners inter alia contends that respondent No. 1 is son of Gurnam Singh and respondent No. 2 is wife of Gurnam Singh. Central Bureau of Investigation has registered a case against Gurnam Singh who was previously posted as Deputy Director, Enforcement Directorate, Chandigarh. The respondents for the

same grievance filed Consumer Complaint No. CC/190/2020 dated 03.07.2020 before State Consumer Disputes Redressal Commission, Punjab which came to be withdrawn vide order dated 06.10.2020 with liberty to avail alternative remedy before the appropriate Fora/Authority/Court, in accordance with law. The respondents for the same relief after two years filed complaint before State Consumer Disputes Redressal Commission, UT, Chandigarh. There was no dispute of territorial jurisdiction, thus, filing of complaint before UT State Consumer Disputes Redressal Commission after withdrawal from State Consumer Disputes Redressal Commission, Punjab itself was mala fide and beyond the jurisdiction of the Commission.

As per respondents, they have purchased flat from petitioners in 2011 whereas father of the respondents in his assets has not made any such disclosure which shows that they have never purchased flat from the petitioners. As per respondents, the alleged transaction took place in 2011 whereas complaint was filed in 2022 and limitation prescribed under Consumer Protection Act is two years. In view of these facts, it is quite evident that State Consumer Disputes Redressal Commission, UT Chandigarh has passed the impugned order beyond its jurisdiction.

Learned Senior counsel for the petitioners in support of his contention on the question of maintainability of writ petition, relied upon judgments of the Hon'ble Supreme Court in **Ibrat Faizan vs. Omaxe Buildhome Private Limited, Civil Appeal No. 3072 of 2022 decided on 13.05.2022** and **Radha Krishan Industries vs. State of Himachal Pradesh and others (2021) 6 SCC 771**.

Notice of motion, returnable for 22.08.2023.

Process dasti as well.

Till the next date of hearing, operation of the impugned order shall remain stayed."

Significantly, the learned Senior counsel for the petitioners did not disclose even on the said date that an appeal had already been preferred by the petitioner before the National Consumer Disputes Redressal Commission, New Delhi.

The said appeal was listed before the National Consumer Disputes Redressal Commission, New Delhi on the next day itself i.e. 21.07.2023. The same was withdrawn by the counsel for the petitioner with liberty to file a fresh appeal. It is seemingly a classical case of Forum shopping on the part of the petitioner, where two remedies had simultaneously been availed by the petitioner in an attempt to pursue for an interim relief.

This Court would have ordinarily been inclined to impose very heavy costs for such misconduct and a deliberate mischievous act on the part of a litigant, however, I refrain from doing so at this stage.

Insofar as the contention that presence of an alternative remedy would not operate as a bar against the High Court to entertain a writ petition, as per the judgment in the matter of ***Radha Krishan and others (supra)*** is concerned, the law laid down by the Hon'ble Supreme Court in the said judgment is not disputed. The Hon'ble Supreme Court has itself held in the aforesaid judgment that when a right is created by a Statute, which itself prescribes the remedy or procedure for enforcing the right of liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India. This Rule of exhaustion of statutory remedy is a Rule of policy, convenience and discretion.

It has also been directed in the abovesaid judgment by the Hon'ble Supreme Court that even though an alternative remedy by itself does not divest the High Court of its power under Article 226 of the Constitution of India in an appropriate case, though ordinarily, a writ petition should not be entertained when an efficacious alternative remedy is provided by law.

The reading of the petitioner is thus, selective and the judgment and the principles culled out thereunder have not been considered in their entirety. The exercise of discretion by the High Court under Article 226 of the Constitution is not an alternate to bye-pass the statutory remedy and unless compelling reasons are available on the file to the satisfaction and conscious of the Court, it may decline to exercise its writ jurisdiction in a matter where an efficacious appellate remedy is available to the petitioner, wherein all factual aspects, disputed questions of facts and arguments can be raised and appreciated.

I fail to find the existence of any such compelling reasons and as to how the statutory appellate authority would not be competent to adjudicate on the issues that are being raised by the petitioner in the present writ petition.

Taking into consideration the statutory provision as enshrined under Section 58 of the Consumer Protection Act, 2019 providing a statutory remedy of appeal to the petitioner, which had been invoked and thereafter, the said appeal has been withdrawn to file a fresh appeal/petition on the same cause of action and in light of the judgment passed by this Court in the matter of ***Kanwaljit Singh Toor (supra)*** as regards the maintainability of the writ petition against an Award passed by the State Consumer Disputes Redressal Commission and after noticing the judgment of ***Ibrat Faizan (Supra)***, I am of

the view that the present petition is not maintainable and the same is accordingly dismissed.

Since the instant petition has been dismissed on the ground of maintainability, the merits of the case are not being commented upon, lest it may cause prejudice to any right of the respective parties.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

FEBRUARY 21, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No